

110TH CONGRESS
1ST SESSION

S. 1980

To improve the quality of, and access to, long-term care.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2007

Mr. SMITH (for himself, Mrs. LINCOLN, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To improve the quality of, and access to, long-term care.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Long-term Care Quality and Modernization Act of
6 2007”.

7 (b) TABLE OF CONTENTS.—The table of contents of
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MEDICARE AND MEDICAID MODERNIZATION

Sec. 101. Demonstration program for joint training of surveyors and providers
in nursing facilities.

Sec. 102. Resumption of nurse aide training program after correction of defi-
ciencies.

- Sec. 103. Authority to exclude high cost and low probability drugs used in the treatment of cancer from the Medicare prospective payment system for skilled nursing facilities.
- Sec. 104. Exclusion of all ambulance services from the Medicare prospective payment system for skilled nursing facilities.
- Sec. 105. Authority to exclude additional items and services from the Medicare prospective payment system for skilled nursing facilities.
- Sec. 106. Payment for blood glucose tests administered as part of a physician, nurse practitioner, or clinical nurse specialist prescribed protocol of blood glucose monitoring.

TITLE II—WORKFORCE SUPPORT

- Sec. 201. Nursing loan repayment program.
- Sec. 202. National nursing database.
- Sec. 203. Reports on nursing levels.

TITLE III—TAX INCENTIVES

- Sec. 301. 15-year recovery period for qualified long-term care improvement property.
- Sec. 302. Investment tax credit for long-term care facility information technology.
- Sec. 303. Long-Term Care Trust Accounts.
- Sec. 304. Refundable credit for contributions to Long-Term Care Trust Accounts.

1 **TITLE I—MEDICARE AND** 2 **MEDICAID MODERNIZATION**

3 **SEC. 101. DEMONSTRATION PROGRAM FOR JOINT TRAIN-** 4 **ING OF SURVEYORS AND PROVIDERS IN** 5 **NURSING FACILITIES.**

6 (a) IN GENERAL.—The Secretary of Health and
7 Human Services (in this section referred to as the “Sec-
8 retary”) shall conduct a demonstration program under
9 which the Secretary, under sections 1819(e) and 1919(e)
10 of the Social Security Act (42 U.S.C. 1395i-3(e),
11 1396r(e)), shall require a State to establish a process for
12 joint training and education of surveyors and providers for
13 skilled nursing facilities and nursing facilities at least an-
14 nually and periodically as changes to regulations, guide-

1 lines, and policy governing nursing facility operations are
2 implemented and used in surveys of participating facili-
3 ties.

4 (b) DEMONSTRATION STATES.—The demonstration
5 program under this section shall be conducted in 5 States.
6 In selecting the States in which to conduct the demonstra-
7 tion program, the Secretary shall ensure that the States
8 vary in geographic location.

9 (c) DURATION.—The Secretary shall conduct the
10 demonstration program under this section for a 2-year pe-
11 riod.

12 (d) WAIVER AUTHORITY.—The Secretary may waiver
13 such requirements of titles XI, XVIII, and XIX of the So-
14 cial Security Act as may be necessary for purposes of car-
15 rying out the demonstration program under this section.

16 (e) REPORT.—

17 (1) IN GENERAL.—Not later than 6 months
18 after the completion of the demonstration program
19 under this section, the Secretary shall submit a re-
20 port to Congress on the project.

21 (2) REQUIREMENTS.—The report submitted
22 under paragraph (1) shall include—

23 (A) the results of the demonstration pro-
24 gram as they relate to the rate and type of defi-
25 ciencies in skilled nursing facilities and nursing

1 facilities in the States selected under subsection
 2 (b) compared to those States not so selected;

3 (B) an evaluation of added efficiencies or
 4 deficiencies in care for patients in skilled nurs-
 5 ing facilities and nursing facilities that directly
 6 resulted from the demonstration program; and

7 (C) recommendations for such legislation
 8 and administrative action as the Secretary de-
 9 termines appropriate.

10 **SEC. 102. RESUMPTION OF NURSE AIDE TRAINING PRO-**
 11 **GRAM AFTER CORRECTION OF DEFI-**
 12 **CIENCIES.**

13 (a) RESUMPTION OF NURSE AIDE TRAINING PRO-
 14 GRAM FOR SKILLED NURSING FACILITIES.—Section
 15 1819(f)(2) of the Social Security Act (42 U.S.C. 1395i-
 16 3(f)(2)) is amended—

17 (1) in subparagraph (B)(iii), in the matter pre-
 18 ceding subclause (I), by striking “(C) and (D)” and
 19 inserting “(C), (D), and (E)”; and

20 (2) by adding at the end the following new sub-
 21 paragraph:

22 “(E) RESUMPTION OF NURSE AIDE TRAIN-
 23 ING PROGRAM AFTER CORRECTION OF DEFI-
 24 CIENCIES.—Clause (iii)(I) of subparagraph (B)

1 shall not apply to a program offered by or in
 2 a skilled nursing facility if the facility has—

3 “(i) corrected any deficiencies that re-
 4 sulted in the prohibition of approval of
 5 such program; and

6 “(ii) demonstrated compliance with
 7 the requirements of subsections (b), (c),
 8 and (d) of this section.”.

9 (b) RESUMPTION OF NURSE AIDE TRAINING PRO-
 10 GRAM FOR NURSING FACILITIES.—Section 1919(f)(2) of
 11 the Social Security Act (42 U.S.C. 1396r(f)(2)) is amend-
 12 ed—

13 (1) in subparagraph (B)(iii), in the matter pre-
 14 ceding subclause (I), by striking “(C) and (D)” and
 15 inserting “(C), (D), and (E)”; and

16 (2) by adding at the end the following new sub-
 17 paragraph:

18 “(E) RESUMPTION OF NURSE AIDE TRAIN-
 19 ING PROGRAM AFTER CORRECTION OF DEFICI-
 20 ENCIENCIES.—Clause (iii)(I) of subparagraph (B)
 21 shall not apply to a program offered by or in
 22 a nursing facility if the facility has—

23 “(i) corrected any deficiencies that re-
 24 sulted in the prohibition of approval of
 25 such program; and

1 “(ii) been determined to be in compli-
 2 ance with the requirements of subsections
 3 (b), (c), and (d) of this section.”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall take effect on January 1, 2008.

6 **SEC. 103. AUTHORITY TO EXCLUDE HIGH COST AND LOW**
 7 **PROBABILITY DRUGS USED IN THE TREAT-**
 8 **MENT OF CANCER FROM THE MEDICARE**
 9 **PROSPECTIVE PAYMENT SYSTEM FOR**
 10 **SKILLED NURSING FACILITIES.**

11 (a) IN GENERAL.—Section 1888(e)(2)(A)(iii) of the
 12 Social Security Act (42 U.S.C. 1395yy(e)(2)(A)(iii)) is
 13 amended—

14 (1) by redesignating subclauses (IV) and (V) as
 15 subclauses (V) and (VI), respectively; and

16 (2) by inserting after subclause (III) the fol-
 17 lowing new subclause:

18 “(IV) Any drugs (not otherwise
 19 described in subclause (II)) used in
 20 the treatment of cancer, including
 21 antineoplastic drugs, antiemetics, and
 22 supportive medications, that the Sec-
 23 retary determines to be appropriate.”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 subsection (a) shall apply to drugs furnished on or after
 3 October 1, 2008.

4 **SEC. 104. EXCLUSION OF ALL AMBULANCE SERVICES FROM**
 5 **THE MEDICARE PROSPECTIVE PAYMENT SYS-**
 6 **TEM FOR SKILLED NURSING FACILITIES.**

7 (a) IN GENERAL.—Section 1888(e)(2)(A)(iii)(I) of
 8 the Social Security Act (42 U.S.C.
 9 1395yy(e)(2)(A)(iii)(I)) is amended by striking “furnished
 10 to” and all that follows before the period.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 subsection (a) shall apply to services furnished on or after
 13 October 1, 2008.

14 **SEC. 105. AUTHORITY TO EXCLUDE ADDITIONAL ITEMS**
 15 **AND SERVICES FROM THE MEDICARE PRO-**
 16 **SPECTIVE PAYMENT SYSTEM FOR SKILLED**
 17 **NURSING FACILITIES.**

18 (a) AUTHORITY.—Section 1888(e)(2)(A) of the So-
 19 cial Security Act (42 U.S.C. 1395yy(e)(2)(A)) is amend-
 20 ed—

21 (1) in clause (i)(II), by striking “and (iv)” and
 22 inserting “(iv), and (v)(I)”; and

23 (2) by adding at the end the following new
 24 clause:

1 “(v) EXCLUSION OF ADDITIONAL
2 ITEMS AND SERVICES DETERMINED APPRO-
3 PRIATE BY THE SECRETARY.—

4 “(I) IN GENERAL.—Items and
5 services described in this clause are
6 any items and services not otherwise
7 described in clauses (ii), (iii), or (iv),
8 that the Secretary determines to be
9 appropriate.

10 “(II) ANNUAL UPDATE.—The
11 Secretary shall annually update the
12 items and services described in sub-
13 clause (I) to take into account
14 changes in the practice of medicine.”.

15 (b) CLARIFICATION.—Items and services described in
16 section 1888(e)(2)(A)(v)(I) of the Social Security Act (42
17 U.S.C. 1395yy(e)(2)(A)(v)(I)), as added by subsection (a),
18 may include items and services furnished in a freestanding
19 clinic to an individual who is a resident of a skilled nursing
20 facility.

21 (c) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on October 1, 2008.

1 **SEC. 106. PAYMENT FOR BLOOD GLUCOSE TESTS ADMINIS-**
 2 **TERED AS PART OF A PHYSICIAN, NURSE**
 3 **PRACTITIONER, OR CLINICAL NURSE SPE-**
 4 **CIALIST PRESCRIBED PROTOCOL OF BLOOD**
 5 **GLUCOSE MONITORING.**

6 Section 1835(a) of the Social Security Act (42 U.S.C.
 7 1395n(a)) is amended—

8 (1) in paragraph (2), in the matter preceding
 9 subparagraph (A), by inserting “, or, as provided in
 10 the last 2 sentences of this subsection with respect
 11 to blood glucose tests, a physician, a nurse practi-
 12 tioner, or a clinical nurse specialist,” after “physi-
 13 cian”; and

14 (2) by adding at the end the following new sen-
 15 tences: “With respect to paragraph (2)(B), a physi-
 16 cian, or a nurse practitioner or a clinical nurse spe-
 17 cialist in accordance with State law, may certify that
 18 a prescribed series of blood glucose tests, furnished
 19 over a specified and limited period of time to mon-
 20 itor an individual’s blood glucose levels, are medi-
 21 cally required. For purposes of the preceding sen-
 22 tence, neither a physician’s, a nurse practitioner’s,
 23 or a clinical nurse specialist’s order for a prescribed
 24 series of blood glucose tests nor a physician’s, a
 25 nurse practitioner’s, or a clinical nurse specialist’s

1 certification that such tests are medically required
2 constitutes a standing order.”.

3 **TITLE II—WORKFORCE SUPPORT**

4 **SEC. 201. NURSING LOAN REPAYMENT PROGRAM.**

5 Section 846(a) of the Public Health Service Act (42
6 U.S.C. 297n(a)) is amended by striking the last sentence.

7 **SEC. 202. NATIONAL NURSING DATABASE.**

8 (a) IN GENERAL.—The Secretary of Health and
9 Human Services shall provide for the establishment of a
10 national nursing database (including geriatric nursing) to
11 be used to predict future nursing shortages.

12 (b) INFORMATION IN DATABASE.—The database es-
13 tablished under subsection (a) shall be designed to include
14 nursing workforce data across all healthcare provider set-
15 tings, including nursing educators, as determined by the
16 Secretary of Health and Human Services to be appro-
17 priate for use in the analysis of trends in the supply and
18 demand of nurses and to create an educational model to
19 predict future nursing workforce needs.

20 (c) FUNDING.—The Secretary of Health and Human
21 Services may transfer, from amounts appropriated for the
22 National Center for Health Workforce Analysis, such
23 sums as may be necessary to carry out this section.

1 **SEC. 203. REPORTS ON NURSING LEVELS.**

2 Section 806 of the Public Health Service Act (42
3 U.S.C. 296e) is amended by adding at the end the fol-
4 lowing:

5 “(i) **REPORTS CONCERNING NURSING LEVELS.**—

6 “(1) **IN GENERAL.**—The entities described in
7 paragraph (2) shall annually submit to the Secretary
8 a report concerning how assistance under this title
9 is being used by such entities to increase the number
10 of nurses, nursing educators, and nurse education
11 enrollment slots (including with respect to geriatric
12 nursing).

13 “(2) **ENTITIES DESCRIBED.**—An entity is de-
14 scribed in this paragraph if such entity is—

15 “(A) an entity that receives a grant or con-
16 tract under this title;

17 “(B) a school of nursing that receives stu-
18 dent loan funds under this title;

19 “(C) a school of nursing that receives
20 nurse faculty student loan funds under this
21 title; and

22 “(D) any other entity that receives assist-
23 ance under this title.”.

1 **TITLE III—TAX INCENTIVES**

2 **SEC. 301. 15-YEAR RECOVERY PERIOD FOR QUALIFIED**
 3 **LONG-TERM CARE IMPROVEMENT PROP-**
 4 **ERTY.**

5 (a) IN GENERAL.—Subparagraph (E) of section
 6 168(e)(3) of the Internal Revenue Code of 1986 (relating
 7 to 15-year property) is amended by striking “and” at the
 8 end of clause (vii), by striking the period at the end of
 9 clause (viii) and inserting “, and”, and by adding at the
 10 end the following new clause:

11 “(ix) any qualified long-term care im-
 12 provement property.”.

13 (b) QUALIFIED LONG-TERM CARE IMPROVEMENT
 14 PROPERTY.—Section 168(e) of the Internal Revenue Code
 15 of 1986 (relating to classification of property) is amended
 16 by adding at the end the following new paragraph:

17 “(8) QUALIFIED LONG-TERM CARE IMPROVE-
 18 MENT PROPERTY.—The term ‘qualified long-term
 19 care improvement property’ means any section 1250
 20 property which is an improvement to a building if—

21 “(A) such improvement is placed in service
 22 more than 3 years after the date such building
 23 was first placed in service, and

24 “(B) such building is, or is a part of, a
 25 nursing facility, assisted living facility, residen-

1 tial care facility, intermediate care facility for
 2 the mentally retarded, or similar facility de-
 3 signed to provide housing and healthcare for
 4 the elderly and disabled.”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to property placed in service after
 7 the date of the enactment of this Act.

8 **SEC. 302. INVESTMENT TAX CREDIT FOR LONG-TERM CARE**
 9 **FACILITY INFORMATION TECHNOLOGY.**

10 (a) IN GENERAL.—Section 46 of the Internal Rev-
 11 enue Code of 1986 (relating to amount of credit) is
 12 amended by striking “and” at the end of paragraph (3),
 13 by striking the period at the end of paragraph (4) and
 14 inserting “, and”, and by adding at the end the following
 15 new paragraph:

16 “(5) the qualifying long-term care facility infor-
 17 mation technology credit.”.

18 (b) AMOUNT OF CREDIT.—Subpart E of part IV of
 19 subchapter A of chapter 1 of the Internal Revenue Code
 20 of 1986 (relating to rules for computing investment credit)
 21 is amended by inserting after section 48B the following
 22 new section:

1 **“SEC. 48C. QUALIFYING LONG-TERM CARE FACILITY TECH-**
 2 **NOLOGY CREDIT.**

3 “(a) IN GENERAL.—For purposes of section 46, the
 4 qualifying long-term care facility technology credit for any
 5 taxable year is an amount equal to 20 percent of the quali-
 6 fied investment for such taxable year.

7 “(b) QUALIFIED INVESTMENT.—

8 “(1) IN GENERAL.—For purposes of subsection
 9 (a), the qualified investment for any taxable year is
 10 the basis of property placed in service by the tax-
 11 payer during such taxable year which is part of a
 12 qualifying long-term care facility technology sys-
 13 tem—

14 “(A)(i) the construction, reconstruction, or
 15 erection of which is completed by the taxpayer,
 16 or

17 “(ii) which is acquired by the taxpayer if
 18 the original use of such property commences
 19 with the taxpayer, and

20 “(B) with respect to which depreciation (or
 21 amortization in lieu of depreciation) is allow-
 22 able.

23 “(2) APPLICABLE RULES.—For purposes of this
 24 section, rules similar to the rules of subsection
 25 (a)(4) and (b) of section 48 shall apply.

1 “(c) QUALIFYING LONG-TERM CARE FACILITY
 2 TECHNOLOGY SYSTEM.—For purposes of this section, the
 3 term ‘qualifying long-term care facility technology system’
 4 means any computers, related equipment, and software for
 5 a healthcare information system of a nursing facility, as-
 6 sisted living facility, residential care facility, intermediate
 7 care facility for the mentally retarded, or similar facility
 8 designed to provide housing and healthcare for the elderly
 9 and disabled.

10 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
 11 or other credit shall be allowed with respect to the basis
 12 of any property taken into account in determining the
 13 credit allowed under this section.”.

14 (c) CONFORMING AMENDMENTS.—

15 (1) Section 49(a)(1)(C) of the Internal Revenue
 16 Code of 1986 is amended by striking “and” at the
 17 end of clause (iii), by striking the period at the end
 18 of clause (iv) and inserting “, and”, and by adding
 19 after clause (iv) the following new clause:

20 “(v) the basis of any property which
 21 is part of a qualifying long-term care facil-
 22 ity technology system under section 48C.”.

23 (2) The table of sections for subpart E of part
 24 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
 2 tion 48B the following new item:

“48C. Qualifying long-term care facility technology credit.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall apply to periods after the date of the
 5 enactment of this Act, under rules similar to the rules of
 6 section 48(m) of the Internal Revenue Code of 1986 (as
 7 in effect on the day before the date of the enactment of
 8 the Revenue Reconciliation Act of 1990).

9 **SEC. 303. LONG-TERM CARE TRUST ACCOUNTS.**

10 (a) **IN GENERAL.**—Subchapter F of chapter 1 of the
 11 Internal Revenue Code of 1986 (relating to exempt organi-
 12 zations) is amended by adding at the end the following
 13 new part:

14 **“PART IX—LONG-TERM CARE TRUST ACCOUNTS**

15 **“SEC. 530A. LONG-TERM CARE TRUST ACCOUNTS.**

16 “(a) **GENERAL RULE.**—A Long-Term Care Trust Ac-
 17 count shall be exempt from taxation under this subtitle.
 18 Notwithstanding the preceding sentence, such account
 19 shall be subject to the taxes imposed by section 511 (relat-
 20 ing to imposition of tax on unrelated business income of
 21 charitable organizations).

22 “(b) **LONG-TERM CARE TRUST ACCOUNT.**—For pur-
 23 poses of this section, the term ‘Long-Term Care Trust Ac-
 24 count’ means a trust created or organized in the United
 25 States for the exclusive benefit of an individual who is the

1 designated beneficiary of the trust and which is designated
2 (in such manner as the Secretary shall prescribe) at the
3 time of the establishment of the trust as a Long-Term
4 Care Trust Account, but only if the written governing in-
5 strument creating the trust meets the following require-
6 ments:

7 “(1) Except in the case of a qualified rollover
8 contribution described in subsection (d)—

9 “(A) no contribution will be accepted un-
10 less it is in cash, and

11 “(B) contributions will not be accepted for
12 the calendar year in excess of the contribution
13 limit specified in subsection (c)(1).

14 “(2) The trustee is a bank (as defined in sec-
15 tion 408(n)), an insurance company (as defined in
16 section 816), or another person who demonstrates to
17 the satisfaction of the Secretary that the manner in
18 which that person will administer the trust will be
19 consistent with the requirements of this section or
20 who has so demonstrated with respect to any indi-
21 vidual retirement plan.

22 “(3) No part of the trust assets will be invested
23 in life insurance contracts.

24 “(4) The interest of an individual in the bal-
25 ance of his account is nonforfeitable.

1 “(5) The assets of the trust shall not be com-
 2 mingled with other property except in a common
 3 trust fund or common investment fund.

4 “(6) Except as provided in subsection (e)(2), no
 5 distribution will be allowed if at the time of such dis-
 6 tribution the designated beneficiary is not a chron-
 7 ically ill individual (as defined in section
 8 7702B(c)(2)).

9 “(c) TAX TREATMENT OF CONTRIBUTIONS.—

10 “(1) CONTRIBUTION LIMIT.—

11 “(A) IN GENERAL.—The aggregate
 12 amount of contributions (other than qualified
 13 rollover contributions described in subsection
 14 (d)) for any taxable year to all Long-Term Care
 15 Trust Accounts maintained for the benefit of
 16 the designated beneficiary shall not exceed
 17 \$5,000.

18 “(B) INFLATION ADJUSTMENT.—In the
 19 case of any taxable year beginning in a calendar
 20 year after 2008, the dollar amount under sub-
 21 paragraph (A) shall be increased by an amount
 22 equal to—

23 “(i) such dollar amount, multiplied by

24 “(ii) the medical care cost adjustment
 25 determined under section 213(d)(10)(B)(ii)

1 for the calendar year in which the taxable
 2 year begins, determined by substituting
 3 ‘2007’ for ‘1996’ in subclause (II) thereof.

4 If any amount as adjusted under the preceding
 5 sentence is not a multiple of \$10, such amount
 6 shall be rounded to the next lowest multiple of
 7 \$10.

8 “(2) GIFT TAX TREATMENT OF CONTRIBU-
 9 TIONS.—For purposes of chapters 12 and 13—

10 “(A) IN GENERAL.—Any contribution to a
 11 Long-Term Care Trust Account on behalf of
 12 any designated beneficiary—

13 “(i) shall be treated as a completed
 14 gift to such beneficiary which is not a fu-
 15 ture interest in property, and

16 “(ii) shall not be treated as a qualified
 17 transfer under section 2503(e).

18 “(B) TREATMENT OF EXCESS CONTRIBU-
 19 TIONS.—If the aggregate amount of contribu-
 20 tions described in subparagraph (A) during the
 21 calendar year by a donor exceeds the limitation
 22 for such year under section 2503(b), such ag-
 23 gregate amount shall, at the election of the
 24 donor, be taken into account for purposes of

1 such section ratably over the 5-year period be-
 2 ginning with such calendar year.

3 “(d) QUALIFIED ROLLOVER CONTRIBUTION.—For
 4 purposes of this section, the term ‘qualified rollover con-
 5 tribution’ means a contribution to a Long-Term Care
 6 Trust Account—

7 “(1) from another such account of the same
 8 beneficiary, but only if such amount is contributed
 9 not later than the 60th day after the distribution
 10 from such other account, and

11 “(2) from a Long-Term Care Trust Account of
 12 a spouse of the beneficiary of the account to which
 13 the contribution is made, but only if such amount is
 14 contributed not later than the 60th day after the
 15 distribution from such other account.

16 “(e) TAX TREATMENT OF DISTRIBUTIONS.—

17 “(1) IN GENERAL.—Any distribution from a
 18 Long-Term Care Trust Account shall be includible
 19 in the gross income of the distributee in the manner
 20 as provided under section 72 to the extent not ex-
 21 cluded from gross income under any other provision
 22 of this subsection.

23 “(2) LONG-TERM CARE INSURANCE PRE-
 24 MIUMS.—If at the time of any distribution, the des-
 25 ignated beneficiary is not a chronically ill individual

(as defined in section 7702B(c)(2)), no amount shall be includible in gross income under paragraph (1) if the aggregate premiums for any qualified long-term care insurance contract for such beneficiary during the taxable year are not less than the aggregate distributions during the taxable year.

“(3) DISTRIBUTIONS FOR QUALIFIED LONG-TERM CARE SERVICES.—For purposes of this subsection, if at the time of any distribution, the designated beneficiary is a chronically ill individual (as so defined)—

“(A) IN-KIND DISTRIBUTIONS.—No amount shall be includible in gross income under paragraph (1) by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute expenses for any qualified long-term care services (as defined in section 7702B(c)).

“(B) CASH DISTRIBUTIONS.—In the case of distributions not described in subparagraph (A), if—

“(i) such distributions do not exceed the expenses for qualified long-term care services (as so defined), reduced by ex-

penses described in subparagraph (A), no amount shall be includible in gross income, and

“(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

“(4) CHANGE IN BENEFICIARIES OR ACCOUNTS.—Paragraph (1) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred—

“(A) to another Long-Term Care Trust Account for the benefit of the designated beneficiary, or

“(B) to the credit of another designated beneficiary under a Long-Term Care Trust Account who is a spouse of the designated beneficiary with respect to which the distribution was made.

“(5) OPERATING RULES.—For purposes of applying section 72—

“(A) to the extent provided by the Secretary, all Long-Term Care Trust Accounts of

1 which an individual is a designated beneficiary
2 shall be treated as one account,

3 “(B) except to the extent provided by the
4 Secretary, all distributions during a taxable
5 year shall be treated as one distribution, and

6 “(C) except to the extent provided by the
7 Secretary, the value of the contract, income on
8 the contract, and investment in the contract
9 shall be computed as of the close of the cal-
10 endar year in which the taxable year begins.

11 “(6) SPECIAL RULES FOR DEATH AND DI-
12 VORCE.—

13 “(A) IN GENERAL.—Rules similar to the
14 rules of paragraphs (7) and (8) of section
15 220(f) shall apply.

16 “(B) AMOUNTS INCLUDIBLE IN ESTATE OF
17 DONOR MAKING EXCESS CONTRIBUTIONS.—In
18 the case of a donor who makes the election de-
19 scribed in subsection (c)(2)(B) and who dies be-
20 fore the close of the 5-year period referred to
21 in such subsection, the gross estate of the donor
22 shall include the portion of such contributions
23 properly allocable to periods after the date of
24 death of the donor.

1 “(7) ADDITIONAL TAX.—The tax imposed by
 2 this chapter for any taxable year on any taxpayer
 3 who receives a payment or distribution from a Long-
 4 Term Care Trust Account which is includible in
 5 gross income shall be increased by 25 percent of the
 6 amount which is so includible under rules similar to
 7 the rules of section 530(d)(4).

8 “(8) DENIAL OF DOUBLE BENEFIT.—For pur-
 9 poses of determining the amount of any deduction
 10 under this chapter, any payment or distribution out
 11 of a Long-Term Care Trust Account shall not be
 12 treated as an expense paid for medical care.

13 “(f) DESIGNATED BENEFICIARY.—For purposes of
 14 this section, the term ‘designated beneficiary’ means the
 15 individual designated at the commencement of participa-
 16 tion in the Long-Term Care Trust Account as the bene-
 17 ficiary of amounts paid (or to be paid) to the account.

18 “(g) LOSS OF TAXATION EXEMPTION OF ACCOUNT
 19 WHERE BENEFICIARY ENGAGES IN PROHIBITED TRANS-
 20 ACTION.—Rules similar to the rules of paragraph (2) of
 21 section 408(e) shall apply to any Long-Term Care Trust
 22 Account.

23 “(h) CUSTODIAL ACCOUNTS.—For purposes of this
 24 section, a custodial account or an annuity contract issued

1 by an insurance company qualified to do business in a
 2 State shall be treated as a trust under this section if—

3 “(1) the custodial account or annuity contract
 4 would, except for the fact that it is not a trust, con-
 5 stitute a trust which meets the requirements of sub-
 6 section (b), and

7 “(2) in the case of a custodial account, the as-
 8 sets of such account are held by a bank (as defined
 9 in section 408(n)) or another person who dem-
 10 onstrates, to the satisfaction of the Secretary, that
 11 the manner in which he will administer the account
 12 will be consistent with the requirements of this sec-
 13 tion.

14 For purposes of this title, in the case of a custodial ac-
 15 count or annuity contract treated as a trust by reason of
 16 the preceding sentence, the person holding the assets of
 17 such account or holding such annuity contract shall be
 18 treated as the trustee thereof.

19 “(i) REPORTS.—The trustee of a Long-Term Care
 20 Trust Account shall make such reports regarding such ac-
 21 count to the Secretary and to the beneficiary of the ac-
 22 count with respect to contributions, distributions, and
 23 such other matters as the Secretary may require. The re-
 24 ports required by this subsection shall be filed at such time

1 and in such manner and furnished to such individuals at
 2 such time and in such manner as may be required.”.

3 (b) TAX ON EXCESS CONTRIBUTIONS.—

4 (1) IN GENERAL.—Subsection (a) of section
 5 4973 of the Internal Revenue Code of 1986 (relating
 6 to tax on excess contributions to certain tax-favored
 7 accounts and annuities) is amended by striking “or”
 8 at the end of paragraph (4), by inserting “or” at the
 9 end of paragraph (5), and by inserting after para-
 10 graph (5) the following new paragraph:

11 “(6) a Long-Term Care Trust Account (as de-
 12 fined in section 530A),”.

13 (2) EXCESS CONTRIBUTION.—Section 4973 of
 14 such Code is amended by adding at the end the fol-
 15 lowing new subsection:

16 “(h) EXCESS CONTRIBUTIONS TO LONG-TERM CARE
 17 TRUST ACCOUNTS.—For purposes of this section—

18 “(1) IN GENERAL.—In the case of Long-Term
 19 Care Trust Accounts (within the meaning of section
 20 530A), the term ‘excess contributions’ means the
 21 sum of—

22 “(A) the amount by which the amount con-
 23 tributed for the calendar year to such accounts
 24 (other than qualified rollover contributions (as

1 defined in section 530A(d))) exceeds the con-
 2 tribution limit under section 530A(c)(1), and

3 “(B) the amount determined under this
 4 subsection for the preceding calendar year, re-
 5 duced by the excess (if any) of the maximum
 6 amount allowable as a contribution under sec-
 7 tion 530A(c)(1) for the calendar year over the
 8 amount contributed to the accounts for the cal-
 9 endar year.

10 “(2) SPECIAL RULE.—A contribution shall not
 11 be taken into account under paragraph (1) if such
 12 contribution (together with the amount of net in-
 13 come attributable to such contribution) is returned
 14 to the beneficiary before June 1 of the year fol-
 15 lowing the year in which the contribution is made.”.

16 (c) FAILURE TO PROVIDE REPORTS ON LONG-TERM
 17 CARE TRUST ACCOUNTS.—Paragraph (2) of section
 18 6693(a) of the Internal Revenue Code of 1986 (relating
 19 to failure to provide reports on individual retirement ac-
 20 counts or annuities) is amended by striking “and” at the
 21 end of subparagraph (D), by striking the period at the
 22 end of subparagraph (E) and inserting “, and”, and by
 23 adding at the end the following new subparagraph:

24 “(F) section 530A(i) (relating to Long-
 25 Term Care Trust Accounts).”.

1 (d) CONFORMING AMENDMENT.—The table of parts
 2 for subchapter F of chapter 1 of the Internal Revenue
 3 Code of 1986 is amended by adding at the end the fol-
 4 lowing new item:

“PART IX. LONG-TERM CARE TRUST ACCOUNTS”.

5 (e) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to taxable years beginning after
 7 December 31, 2007.

8 **SEC. 304. REFUNDABLE CREDIT FOR CONTRIBUTIONS TO**
 9 **LONG-TERM CARE TRUST ACCOUNTS.**

10 (a) IN GENERAL.—Subpart C of part IV of sub-
 11 chapter A of chapter 1 of the Internal Revenue Code of
 12 1986 (relating to refundable credits) is amended by insert-
 13 ing after section 35 the following new section:

14 **“SEC. 35A. CONTRIBUTIONS TO LONG-TERM CARE TRUST**
 15 **ACCOUNTS.**

16 “(a) GENERAL RULE.—In the case of an individual,
 17 there shall be allowed as a credit against the tax imposed
 18 by this subtitle for the taxable year an amount equal to
 19 10 percent of the contributions to any Long-Term Care
 20 Trust Account allowed under section 530A for such tax-
 21 able year.

22 “(b) REDUCTION BASED ON ADJUSTED GROSS IN-
 23 COME.—

24 “(1) IN GENERAL.—The percentage which
 25 would (but for this subsection) be taken into account

1 under subsection (a) for the taxable year shall be re-
 2 duced (but not below zero) by the percentage deter-
 3 mined under paragraph (2).

4 “(2) AMOUNT OF REDUCTION.—The percentage
 5 determined under this paragraph is the percentage
 6 which bears the same ratio to the percentage which
 7 would be so taken into account as—

8 “(A) the excess of—

9 “(i) the taxpayer’s adjusted gross in-
 10 come for such taxable year, over

11 “(ii) \$95,000 (\$190,000 in the case of
 12 a joint return), bears to

13 “(B) \$10,000 (\$20,000 in the case of a
 14 joint return).

15 “(3) ADJUSTED GROSS INCOME.—For purposes
 16 of this subsection, adjusted gross income shall be de-
 17 termined without regard to sections 911, 931, and
 18 933.

19 “(c) DENIAL OF DOUBLE BENEFIT.—No deduction
 20 shall be allowed under this chapter for any amount taken
 21 into account in determining the credit under this section.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Paragraph (2) of section 1324(b) of title
 24 31, United States Code, is amended by inserting be-

1 fore the period “, or from section 35A of such
2 Code”.

3 (2) The table of sections of subpart C of part
4 IV of subchapter A of chapter 1 of the Internal Rev-
5 enue Code of 1986 is amended by inserting after the
6 item relating to section 35 the following new item:

“Sec. 35A. Contributions to Long-Term Care Trust Accounts.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to amounts paid or incurred in tax-
9 able years beginning after December 31, 2007.

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